

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CRAIG TINSLEY, TRUSTEE	§	
	§	
Plaintiff,	§	
	§	
VS.	§	Case No. 4:12cv152
	§	
BAC HOME LOAN SERVICING, L.P.,	§	
BANK OF NEW YORK MELLON,	§	
RECONTRUST COMPANY, N.A.	§	
	§	
Defendants.	§	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Now before the Court is Defendants BAC Home Loan Servicing, L.P., now Bank of America, N.A. by merger, ReconTrust Company, N.A., and The Bank of New York Mellon's Motion to Dismiss (Dkt. 4). As set forth below, the Court finds that the request for dismissal should be GRANTED and the case should be dismissed for want of prosecution.

Plaintiff filed this action in the 401st Judicial District Court of Collin County, Texas on March 5, 2012 against Defendants BAC Home Loans Servicing, L.P., Bank of New York Mellon, and Recontrust Company, N.A. In his petition, Plaintiff seeks a declaratory judgment that Defendants' claim on the property located at 1409 Harvest Glen Drive, Plano, Texas is invalid and seeks to enjoin Defendants from foreclosing on the Property. Defendants removed the case to this Court on March 19, 2012.

Defendants filed their motion to dismiss on March 23, 2012, arguing that Plaintiff had failed to state a claim on various grounds. On April 2, 2012, the Court entered an order directing the parties to confer as required by Federal Rule of Civil Procedure 26(f) and to submit a Rule 26(f) report and proposed scheduling order accordingly. *See* Dkt. 6. On April 24, 2012, after no response was filed to Defendants' motion to dismiss, this Court entered an order stating that if no response were filed on or before March 1, 2012, the Court would assume that Plaintiff was not opposed to dismissal of his claims. *See* Dkt. 8.

Plaintiff has not filed a response to the motion or otherwise amended his complaint to address the deficiencies raised by the motion. Defendants have also recently notified that Court that they attempted to contact Plaintiff in conjunction with the Rule 26(f) conference and Plaintiff did not respond and wholly failed to participate in the conference directed by the Court. *See* Dkt. 11. It also appears that all much of the correspondence sent to Plaintiff by the Court and Defendants' counsel has been returned as unclaimed. *See* Dkts. 7, 9 & 12. Having considered Plaintiff's failure to comply with the Court's order including his obligation to keep his contact information current and to retrieve all court correspondence, the Court finds that the matter should be dismissed. *See* FED. R. CIV. P. 41(b). Plaintiff is simply not prosecuting any claims he may have.

Therefore, the Court finds that Defendants BAC Home Loan Servicing, L.P., now Bank of America, N.A. by merger, ReconTrust Company, N.A., and The Bank of New York Mellon's Motion to Dismiss (Dkt. 4) should be GRANTED in part and that case should be dismissed for want of prosecution.

Any pretrial deadlines are hereby ABATED pending the District Judge's consideration of this report and recommendations. Should the matter not be dismissed, the parties are directed to file an amended proposed scheduling order within thirty (30) days of the District Judge's disposition of the motion to dismiss.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 12th day of June, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE